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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

OMID BEHESHTI, **Plaintiff and Appellant,** **v.** **DANIEL ROBERT BARTLEY,** **Defendant and Respondent.**	**A122128** **(Alameda County Super. Ct. No. RG07320387)**

A client discharged the attorney representing him in a civil suit and retained new counsel. After the lawsuit settled in favor of the client, the former attorney sought to recover legal fees he claimed were owed to him under his written retainer agreement. The former attorney filed a notice of lien in the underlying action, corresponded with successor counsel regarding his claim for fees, and filed a cross-complaint seeking the fees in an interpleader action filed by the settling defendant. The client brought a malpractice action against the former attorney, which included causes of action based on these efforts to enforce the lien.

We conclude the attorney's efforts to recover his fees by asserting a contractual lien against settlement proceeds was activity protected under the "anti-SLAPP" provisions of Code of Civil Procedure section 425.16 (hereafter, section 425.16).[1] Because the trial court properly determined there was no probability the client would

[1] SLAPP is the acronym for "strategic lawsuit against public participation." Unless otherwise indicated, further statutory references are to the Code of Civil Procedure.

prevail on the claims arising from this conduct, we affirm its order granting the attorney's special motion to dismiss those causes of action.

I. *BACKGROUND*

Plaintiff Omid Beheshti pursued a successful wage and hour claim against his former employer, American Advantech Corporation (Advantech). His supervisor at Advantech, John Liou, sent forged letters to Beheshti's new employer suggesting that Beheshti had a proclivity to sue former employers. Beheshti retained defendant Daniel Robert Bartley to pursue claims arising from Liou's interference with his new employment.

Bartley's written retainer agreement with Beheshti provided in relevant part, "Client may discharge Lawyer at any[]time. Upon discharge, Client will immediately reimburse Lawyer for all outstanding expenses. Notwithstanding the discharge, Client will be obligated to pay Lawyer out of any recovery a reasonable attorney's fee for all services provided under the terms of this agreement." The agreement also provided, "Client hereby grants Lawyer an assignment and lien on Client's claims, and on any and all causes of action that are the subject of Lawyer's representation under this agreement. Lawyer's lien will be for any sums owing to Lawyer at the conclusion of Lawyer's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise." Bartley's compensation was to be calculated on a contingency fee basis.

Bartley filed suit on Beheshti's behalf against Advantech, Liou and Liou's then-current employer. (*Beheshti v. Liou et al*., Alameda County Superior Court No. 2002-045972, sometimes referred to as "the underlying action.") Advantech successfully moved for summary judgment and was awarded attorney fees under the prevailing party clause of the prior settlement agreement. Beheshti discharged Bartley as his attorney and substituted in the firm of Chapman, Popik and White (the Chapman firm). Following a jury verdict of $1.1 million against Liou, the case ultimately settled for $1.6 million inclusive of attorney fees, with $300,000 to be paid to Beheshti immediately and $1.3 million to be paid within 60 days.

After Liou's payment of the initial $300,000, but before his payment of the $1.3 million balance, Bartley filed a notice of lien in the underlying action and advised the Chapman firm he was asserting a lien against the settlement proceeds. Bartley and the Chapman firm exchanged correspondence regarding the lien, but no agreement could be reached as to the amount of fees, if any, that Bartley was owed. Liou filed a separate interpleader action (*Liou v. Beheshti et al*., Alameda County Superior Court No. HG 07-346831, sometimes referred to as "the interpleader action") and deposited the $1.3 million balance of the settlement proceeds with the court.[2] Bartley filed a cross-complaint against Beheshti and the Chapman firm seeking the recovery of his fees and additional relief under theories of quantum meruit, declaratory relief, breach of fiduciary duty, tortious interference with prospective economic advantage, and fraud and deceit.

Beheshti filed the instant lawsuit against Bartley. The first two causes of action in the first amended complaint, for legal malpractice and breach of fiduciary duty, were based primarily on allegations that Bartley's wrongful conduct in the underlying case resulted in an award of attorney fees against Beheshti in connection with Advantech's successful motion for summary judgment. Neither cause of action is at issue in this appeal. The four remaining causes of action were for intentional interference with prospective economic advantage, conversion, intentional infliction of emotional distress and negligent infliction of emotional distress. They arose not from Bartley's representation of Beheshti in the underlying action against Liou, but from his assertion of an attorney lien on the settlement proceeds and his attempts to recover the fees he claimed were owed under the written retainer agreement.

The general allegations of the first amended complaint included the following language: "60. In June 2007, Bartley filed a notice of attorney[] lien. [¶] . . .

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[2] We take judicial notice of the cross-complaint filed by Bartley in the interpleader action. (Evid. Code, §§ 452, subd. (d), 459.) We deny Bartley's request for judicial notice of other documents in the related proceedings, filed on May 20, 2009, as being unnecessary to the resolution of issues in this appeal. We also deny Beheshti's request for judicial notice filed on February 24, 2009, as being unnecessary to the resolution of issues in this appeal.

[¶] "64. Bartley used his attorney[] lien to prevent distribution of $1,300,000 in settlement funds to Beheshti. [¶] 65. In or around August 2007, Beheshti offered to sequester a sum equal to Bartley's claim for fees and costs, pending adjudication of such claims, so that the remainder of the settlement funds could be released to Beheshti. Bartley refused to agree to Beheshti's proposals, and demanded, at various junctures, immediate payment of some funds or sequestration of $725,816 of the settlement funds. [¶] 66. With Beheshti and Bartley at impasse, Liou canceled the settlement checks and filed an interpleader action on September 18, 2007, joining Beheshti and Bartley as [defendants] and depositing [the] $1,300,000 balance of the settlement funds with the court. [¶] 67. On or about October 17, 2007, Bartley sent an arbitration notice to Beheshti stating, in part, 'You have an outstanding balance for fees and/or costs for professional services in the amount of $242,713[.]' [¶] 68. On or about October 28, 2007, Beheshti sought Bartley's stipulation to release as undisputed funds the remainder of sums held by the court beyond the claim of $242,713. Bartley refused this request. [¶] 69. Beheshti then brought a motion in court, seeking immediate release of the interpleaded funds above and beyond Bartley's claim of $242,713. Bartley opposed the motion, but it was granted by the court."

In the third cause of action for intentional interference with prospective economic advantage, Beheshti specifically alleged: "82. Plaintiff entered into a confidential settlement agreement with Liou; said agreement constituted an economic relationship that probably would have resulted in an economic benefit to Plaintiff; [¶] . . . [¶] 85. Bartley engaged in wrongful conduct through improperly asserting an unappliable [sic] lien, designed to disrupt the agreement between Plaintiff and Liou, and by using that lien to improperly demand sequestration of an unreasonable amount of funds, all in an effort to deprive Plaintiff of funds to which he was entitled by virtue of the economic relationship, and further by refusing to permit the release of funds that, as the court has held, belonged undisputedly and rightfully to Plaintiff. [¶] 86. The relationship was disrupted and an action in interpleader ensued to which Plaintiff and Bartley became parties; [¶] 87. Bartley refused Plaintiff's good faith offer of sequestration of funds sufficient to

cover [the] claim against Plaintiff; thereby preventing Plaintiff's access to undisputed client funds. . . ."

The fourth cause of action for conversion alleged, "92. Plaintiff had a right to possess settlement funds that were due to him by virtue of the judgment and settlement in the underlying action," and "93. Bartley intentionally prevented, and continues to prevent, Plaintiff from having access to the settlement funds for a significant period of time."

The fifth cause of action for intentional infliction of emotional distress similarly alleged that "Bartley wrongfully asserted an unlawful and over-reaching lien; disclosed confidential information without Plaintiff's consent; deprived Plaintiff of access to client funds; and engaged in other misconduct, all the while in full knowledge of the fact that plaintiff was very distressed and suffering of financial hardship." The sixth cause of action for negligent infliction of emotional distress alleged that this conduct, "if not intentional, was negligent on part of Defendants. . . ."

Bartley filed a special motion to strike the last four causes of action pursuant to the anti-SLAPP statute, arguing that his pursuit of fees under an attorney lien was an act "in furtherance of [his] right of petition or free speech under the United States or California Constitution in connection with a public issue" and there was no probability Beheshti would prevail on his claims. (§ 425.16, subd. (b)(1).) The trial court granted the motion and Beheshti appeals.

II. *DISCUSSION*

A. *The Anti-SLAPP Statute*

The anti-SLAPP statute, section 425.16, provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) As relevant here, an " 'act in furtherance of the person's right of petition or free speech under the United States or California Constitution

in connection with a public issue' includes (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law. . . . ." (§ 425.16, subd. (e).)

Section 425.16 establishes a procedure by which the trial court evaluates the merits of the lawsuit using a summary judgment-like procedure at an early stage of the litigation. (*Schaffer v. City and County of San Francisco* (2008) 168 Cal.App.4th 992, 998.) To prevail on an anti-SLAPP motion, a defendant must first make " 'a threshold showing that the challenged cause of action' arises from an act in furtherance of the right of petition or free speech in connection with a public issue." (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*).) Once the defendant meets the burden of proving that a cause of action arises from protected conduct, the plaintiff must demonstrate " 'a probability of prevailing on the claim.' " (*Varian,* at p. 192.) If the plaintiff fails to do so, the cause of action must be stricken. (*Ibid*.)

" 'Review of an order granting or denying a motion to strike under section 425.16 is de novo. [Citation.] We consider "the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) We neither "weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." [Citations.]' " (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326 (*Flatley*); see also *Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 929 (*Kajima*).)

B. *First Prong—Protected Activity*

The filing of litigation is an exercise of the constitutional right of petition and a cause of action based on "statements, writings and pleadings in connection with civil

litigation" falls within section 425.16. (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1261 (*Neville*); see also *Navellier*, *supra*, 29 Cal.4th at p. 90; *Kajima*, *supra*, 95 Cal.App.4th at p. 929.) Courts have adopted a "fairly expansive view" of litigation-related conduct to which the anti-SLAPP provisions apply. (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 908.) Communications that are otherwise legal and are made during or in anticipation of litigation are generally entitled to protection. (*Flatley, supra*, 39 Cal.4th at pp. 319, 322-325; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1006, 1115 (*Briggs*); *Neville*, *supra*, 160 Cal.App.4th at p. 1266; *A.F. Brown Electrical Contractor, Inc. v. Rhino Electric Supply, Inc.* (2006) 137 Cal.App.4th 1118, 1125-1126 (*A.F. Brown*); *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 282.)

Here, the four causes of action challenged by the special motion to strike arose from Bartley's assertion of an attorney lien through his communications with Beheshti's successor counsel, his filing of the notice of lien in the underlying action, his claim for a portion of the settlement proceeds in the interpleader action filed by Liou, and his refusal in the interpleader action to agree to a release of the funds. Bartley's pursuit of the lien through these judicial proceedings was petitioning activity protected by the anti-SLAPP law. (See *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 477 (*Premier Medical*) [litigation of lien claims through workers' compensation process was activity covered by anti-SLAPP statute].)

Beheshti argues that the court should not have granted the special motion to strike because it was based on the erroneous premise that the *notice* of lien was petitioning activity, whereas in reality, the notice of lien was without legal effect. He notes that the trial court in the underlying action lacked jurisdiction to resolve the attorney lien; thus, he claims, the filing of the notice in that case should not be equated to the filing of a pleading implicating the right of petition. (See *Carroll v. Interstate Brands Corp.* (2002) 99 Cal.App.4th 1168, 1172, 1175, 1177.)

An attorney lien is a security interest in the proceeds of the litigation. (*Fletcher v. Davis* (2004) 33 Cal.4th 61, 67.) Though it is common practice for an attorney asserting a lien to file a notice of that lien in the underlying suit (*Valenta v. Regents of University*

of California (1991) 231 Cal.App.3d 1465, 1470 (*Valenta*); *Hanson v. Jacobsen* (1986) 186 Cal.App.3d 350, 354-355 (*Hanson*)), the court hearing that underlying suit does not have the jurisdiction to determine the lien. (*Carroll, supra*, 99 Cal.App.4th at p. 1176.) An attorney seeking to enforce a lien must typically file a separate action to do so. (*Id.* at p. 1177.)

Bartley's notice of lien did not entitle him to an adjudication of the lien in the underlying action, but it was made in anticipation of further litigation on his claim for fees—litigation that materialized when the interpleader action was filed and that claim was placed before the court for resolution. (*Briggs, supra*, 19 Cal.4th at p. 1115; *Neville, supra*, 160 Cal.App.4th at p. 1259; *Birkner, supra*, 156 Cal.App.4th at p. 282.) In any event, the challenged causes of action are not based exclusively on the notice of lien, but also on Bartley's actions during the interpleader proceeding. Bartley's actions in the interpleader proceeding amounted to protected petitioning activity, even if we assume the notice of lien did not. (See *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 672 [a mixed cause of action will be subject to section 425.16 unless the protected conduct is "merely incidental" to the unprotected conduct].)

We also reject Beheshti's suggestion that his claims arose not from Bartley's exercise of the right to petition, but from Bartley's wrongful conduct in withholding undisputed client funds. Section 425.16 extends to " 'any *act*. . .in furtherance of the. . .right [to] petition. . . .' " (*Id*., subd. (b)(1), italics added.) Bartley's alleged interference with the settlement proceeds, whether characterized as communications or conduct, were acts taken during or in anticipation of legal proceedings to recover the attorney fees secured by the lien, as provided for in the written retainer agreement signed by Beheshti. (See *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 19 [§ 425.16 implicates conduct as well as communications in connection with petitioning activity].)

C. *Second Prong—Probability of Success*

Having concluded that the conduct underlying Beheshti's claims was protected by section 425.16, we turn to the second step of the anti-SLAPP analysis to determine

whether Beheshti established a probability of prevailing that would defeat the anti-SLAPP motion. (§ 425.16, subd. (b)(1).) This step requires the plaintiff to demonstrate that the challenged causes of action were " ' "both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " (*Navellier*, *supra*, 29 Cal.4th at pp. 88-89.) This determination is made in light of the pleadings and evidentiary submissions of both parties: "[T]hough the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." (*Premier Medical*, *supra*, 136 Cal.App.4th at pp. 476-477.)

As we explain, Beheshti did not carry his burden of establishing a prima facie case for the causes of action dismissed under the anti-SLAPP statute. Additionally, we conclude the litigation privilege under Civil Code section 47, subdivision (b) is an affirmative defense that would bar the claims even if we assume Beheshti presented evidence supporting all necessary elements of the various causes of action.

1. *Third Cause of Action: Intentional Interference with Prospective Economic Advantage*

The third cause of action for intentional interference with prospective economic advantage would require proof of the following elements: " ' "(1) an economic relationship between the plaintiff and some third party with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." ' " (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 339 (*LiMandri*).) A plaintiff seeking to recover under this theory must prove the defendant "not only knowingly interfered with the plaintiff's expectancy, but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th

376, 393.) Conduct is independently wrongful when it is "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159 (*Korea Supply*).)

Beheshti's claim for intentional interference with prospective economic advantage is based on Bartley's pursuit of attorney fees through the notice of lien and his filings and communications in the subsequent interpleader action. The notice of lien, while not necessary to perfect the claim, was consistent with a practice long recognized by the courts and is not an independent wrong that could support a claim for intentional interference. (See *Valenta*, *supra*, 231 Cal.App.3d at p. 1470; *Hanson*, *supra*, 186 Cal.App.3d at pp. 354-355). Nor does Bartley's litigation of his claim for fees in the interpleader action amount to an independent wrong. Regardless of the validity of the lien or the amount of fees ultimately owed, it is undisputed that Bartley and Beheshti signed a written agreement which on its face gave Bartley a right to recover reasonable compensation for his services. Bartley's assertion of a claim based on that agreement is not "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard" (*Korea Supply*, *supra*, 29 Cal.4th at p. 1159), and there is no probability Beheshti could prevail on his claim for intentional interference.

2. *Fourth Cause of Action: Conversion*

Nor has Beheshti demonstrated a probability of success on his fourth cause of action for conversion, which requires proof of (1) Beheshti's ownership or right to possession of the property (i.e., the settlement proceeds in the underlying action against Liou); (2) Bartley's wrongful act toward or disposition of the property; and (3) damages. (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066.) Even if we assume that Beheshti was legally entitled to all of the settlement proceeds and was damaged by the delay in their receipt, evidence of the second element is lacking because Bartley committed no wrongful act that converted those funds. The notice of lien simply advised the parties of Bartley's claim and did not have a direct effect on the distribution of the $1.3 million that had not yet been paid to Beheshti. (See *Carroll*, *supra*, 99 Cal.App.4th

at pp. 1175-1177.) The money was then deposited with the court *by Liou* as part of an interpleader action. Beheshti cites no authority to support the suggestion that submission of a claim to a judicial tribunal under the interpleader statute can itself be a tort. (See *Pacific Loan Management Corp. v. Superior Court* (1987) 196 Cal.App.3d 1485, 1491.)

3. *Fifth Cause of Action: Intentional Infliction of Emotional Distress*

The tort of intentional infliction of emotional distress, as averred in the fifth cause of action, requires proof of: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering of severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Bosetti v. United States Life Ins. Co. in City of New York* (2009) 175 Cal.App.4th 1208, 1241-1242 (*Bosetti*).) The conduct leading to the claim must be "so extreme and outrageous 'as to exceed all bounds of that usually tolerated in a civilized society.' " (*Wilkins v. National Broadcasting Co.* (1999) 71 Cal.App.4th 1066, 1087.)

The conduct supporting Beheshti's claim for intentional infliction of emotional distress consisted of Bartley's efforts to assert and enforce his contractual lien. Such conduct falls far short of the outrageous behavior necessary to support the cause of action. (See *Bosetti*, *supra*, 175 Cal.App.4th at p. 1241-1242 [insurer's termination of benefits did not give rise to intentional infliction claim when there was a genuine dispute as to coverage].) There is no reasonable probability Beheshti would prevail under this theory at trial.

4. *Sixth Cause of Action: Negligent Infliction of Emotional Distress*

We also conclude there is no probability that Beheshti could prevail on the sixth cause of action for negligent infliction of emotional distress. Negligent infliction of emotional distress is not a separate tort, but is regarded as a subspecies of negligence. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072; *Klein v. Children's Hospital Medical Center* (1996) 46 Cal.App.4th 889, 894.) Recovery is dependent upon

traditional tort analysis, requiring proof of duty, breach of duty, causation and damages. (*Burgess* at p. 1072; *Klein* at p. 894.)

An attorney's duty to his or her client in civil litigation ordinarily concerns the client's economic interests and does not extend to protection against emotional injury. (*Pleasant v. Celli* (1993) 18 Cal.App.4th 841, 853-854, disapproved on another point in *Adams v. Paul* (1995) 11 Cal.4th 583, 591, fn. 4; *Merenda v. Superior Court* (1992) 3 Cal.App.4th 1, 10, disapproved on another point in *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1053.) Damages for emotional distress generally are not recoverable in a legal malpractice action if the emotional injury derived from an economic loss. (*Camenisch v. Superior Court* (1996) 44 Cal.App.4th 1689, 1697.)

In this case, Beheshti's claim for negligent infliction of emotional distress does not arise from an act of malpractice per se; rather, it is based on Bartley's attempts to recover attorney fees after his representation ended. But the rationale of the above cases applies equally because the interest at stake is purely economic: " If the representation concerns primarily economic interests, 'the foreseeability of serious emotional harm to the client and the degree of certainty that the client suffered such injury by loss of an economic claim are tenuous.' " (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 73.) We conclude it is not foreseeable that an attorney's efforts to assert a contractual lien on a client's recovery would result in serious emotional harm to the client. "In our judgment a reasonable person, normally constituted, ought to be able to cope with the mental stress of loss of hoped for tort damages without serious mental distress." (*Merenda, supra,* 3 Cal.App.4th at p. 10.)

Because the facts on which Beheshti relies to support his claim of negligent infliction of emotional distress do not support the imposition of a duty with respect to that theory, there is no reasonable probability he would prevail on the sixth cause of action.

5. *Litigation Privilege*

Bartley argues that even assuming there were some factual or legal basis for the claims dismissed by the court, Beheshti could not prevail because the conduct underlying those claims was largely protected by the litigation privilege. We agree that Bartley has

carried his burden of establishing a probability of prevailing on this defense. (See *Premier Medical, supra,* 136 Cal.App.4th at p. 478.)[3]

Civil Code section 47, subdivision (b)(2) provides: "A privileged publication or broadcast is one made: [¶] . . . .[¶] . . . In any . . . judicial proceeding. . . ." This statutory litigation privilege applies to any communication " ' "(1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action." ' " (*A.F. Brown, supra,* 137 Cal.App.4th at p. 1126.) Communications that are preparatory to or made in anticipation of litigation are within the ambit of section 47, subdivision (b) so long as the litigation is contemplated in good faith and under serious consideration. (*Id.* at p. 1128.)

A number of cases have concluded that a notice of lien is a communication protected under the litigation privilege so long as it is authorized by law and designed to achieve the object of the litigation. (See *Albertson v. Raboff* (1956) 46 Cal.2d 375, 380-381 [recording notice of lis pendens]; *Wilton v. Mountain Wood Homeowners Assn.* (1993) 18 Cal.App.4th 565, 570 [publishing an assessment lien]; *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 830-831 [filing of hospital lien]; *Frank Pisano & Associates v. Taggart* (1972) 29 Cal.App.3d 1, 25 [filing of mechanic's lien]; *A.F. Brown, supra,* 137 Cal.App.4th at pp. 1127-1128 [stop notices filed by a supplier to recover money allegedly owed by a contractor on a public works project].)

In *LiMandri, supra,* 52 Cal.App.4th at pp. 344-348, the court refused to apply the litigation privilege to a notice of lien filed by a creditor on proceeds from a settlement in favor of the debtors in an unrelated civil action. The debtor's attorney, who had his own contractual lien on the settlement for payment of his attorney fees, filed a separate suit against the creditor's lawyer for intentionally interfering with that existing contractual relationship by pursuing a claim of superior lien rights even though he (the creditor's

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[3] The litigation privilege has also been used as an aid in defining protected conduct under the anti-SLAPP statute, though the two laws are not coextensive. (See *Flatley, supra,* 39 Cal.4th at pp. 320-325.)

attorney) knew about the preexisting attorney lien. (*Id*. at pp. 334-335, 343-344.) The court held that the litigation privilege did not apply to the notice of lien filed by the creditor's attorney because he was not a participant in the underlying litigation and the lien was not related to the underlying litigation. (*Id*. at p. 345.) Although an interpleader action was filed by the settling defendant to determine the distribution of the settlement proceeds as between the creditor and the plaintiffs' attorney, that action was not a proceeding contemplated in good faith by the creditor's lawyer when the notice of lien was filed. (*Id*. at p. 348.)

Although the facts in *LiMandri* are superficially somewhat similar to this case, that decision is ultimately distinguishable with respect to its conclusion that the litigation privilege did not apply. In *LiMandri*, there was no showing the creditor seeking to invoke the litigation privilege would have filed separate litigation to enforce the purported lien. (*LiMandri*, *supra*, 52 Cal.App.4th at p. 348.) Here, Bartley was actively pursuing his claim for attorney fees, as evidenced by correspondence between him and the Chapman firm discussing his lien, and he filed the notice of lien in connection with that pursuit. When the interpleader action was filed by Liou, Bartley filed a cross-complaint against Beheshti seeking payment of the legal fees related to the lien. Litigation of amounts owed under the lien was at the very least "seriously contemplated" when the notice of lien was filed. Bartley's lien could not be determined in the underlying action, but it was closely related to that action in a way the lien in *LiMandri* was not.

Even if we assume that *LiMandri* renders the litigation privilege inapplicable to the *notice* of lien filed by Bartley, the privilege would certainly apply to communications and pleadings filed in and during the interpleader action itself. The various causes of action at issue in this appeal are predicated not only on the notice of lien (which, as we have previously discussed, did not itself effectuate any restriction on the settlement proceeds), but also on Bartley's general pursuit of attorney fees during the interpleader action. Beheshti could not have prevailed on any of his claims based solely on the filing

of the notice of lien, and the other conduct alleged in support of the claims was protected under the litigation privilege.

III. *DISPOSITION*

The order of the trial court granting the special motion to strike is affirmed. Defendant Bartley is entitled to recover his costs and fees on appeal.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.